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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,405	03/16/2004	Robert Senn	PI/5-20835C/D1	5092

26748 7590 01/09/2008  
SYNGENTA CROP PROTECTION, INC.  
PATENT AND TRADEMARK DEPARTMENT  
410 SWING ROAD  
GREENSBORO, NC 27409

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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01/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/801,405	SENN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alton N. Pryor	1616	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9, 17-20 and 23-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 9, 17-20, 23-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,17-20,23-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mainfisch et al (USPN 5852012; 12/22/98) and The Agrochemical Handbook A0891 / Aug 91. Mainfisch teaches an insecticidal composition comprising compounds 1.2 and 1.4 in Table 1 (see column 20 Table 1) which are equivalent to instant compounds A.1 and A.3. Mainfisch teaches that compositions comprising the compounds are made by combining the compounds with auxiliaries and optionally other actives. See column 15 lines 52-58, column 17 lines 50-67. Mainfisch teaches a method of controlling insects comprising applying the compounds to the pests (insects), crop, seed, foliage, and soil. See column 18 lines 12-49, column 13 line 35 – column 15 line 37. Mainfisch does not teach the composition or method comprising abamectin. However, The Agrochemicals Handbook teaches that abamectin is an insecticide and that abamectin is applied to crops and binds to soils in order to control insects. It would have been obvious to one having ordinary skill in the art to modify the invention taught by Mainfisch to include the abamectin taught by The Agrochemical Handbook. One would have been motivated to do this since each reference have the same utility, i.e. each reference discloses insecticidal inventions and since Mainfisch welcomes the addition of auxiliaries and other actives.

*Response to Applicant's argument*

Applicant argues that the Maienfisch reference is directed to the preparation of tetrahydrooxadiazines as insecticides and embraces compounds falling within the scope of the claims. Maienfisch also teaches that other actives which may be added to the preparation *may be* from the classes: organophosphorus compounds, nitrophenols and derivatives, formamidines, ureas ... and thuringiensis of which none of the classes cited would suggest / embrace abamectin. Examiner agrees that Mainfisch suggests the addition of compounds from the above classes of other actives to the composition. However, Examiner would like to point out in addition to this teaching that Mainfisch at column 17 starting at line 50 recites "the compositions according to the invention can be broadened considerably and adapted to prevailing circumstances by addition of *other insecticidal active ingredients*." Examiner would further like to point out that this teaching is broader than the teaching of the addition of the above classes of actives to Maienfisch's invention, but includes the addition of those actives as well as the addition of other actives (insecticides) not encompassed by the classes. For this reason one having ordinary skill in the art would have been motivated to add the abamectin taught by The Agrichemical Handbook to Maienfisch's composition to arrive at the instant invention. Note both inventions (prior art and instant) are to insecticidal compositions / inventions and Mainfisch welcomes the addition of other insecticides to his invention. Since Mainfisch's composition and The Agrochemicals Handbook active have the same utility it would have been obvious to try combining the two individual teachings to arrive at a composition that would have the same utility. The fact that Mainfisch discloses that the additional actives *may be* from particular classes suggests that additional actives may be those listed in the Mainfisch reference as well as those not listed the in

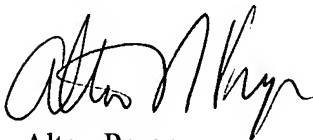
the Mainfisch reference. The term "may be" is open language allowing for the inclusion of any or all additional actives.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alton Pryor  
Primary Examiner  
AU 1616